

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 377 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy  
of the judgement?
  4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

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JAYESH CHANDULAL VAIDYA

Versus

STATE OF GUJARAT

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Appearance:

MR AR LAKHIA for Petitioners

Mr. AJ Desai, APP for Respondent No. 1

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/04/98

ORAL JUDGEMENT

Heard learned Advocate Mr. A.R. Lakhia for  
petitioners. Rule. Learned APP Mr. A.J. Desai waives  
services of rule on behalf of respondent. The petitioner  
has approached this court to challenge the legality,  
validity and propriety of order passed by learned Addl.  
Sessions Judge, Ahmedabad (Rural), District Ahmedabad,

confirming the order passed by learned Chief Judicial Magistrate, Ahmedabad (Rural), Ahmedabad.

2. The Satellite Police Station, Ahmedabad, registered offence against present petitioners being Crime Register No. I-360 of 1995 for the offence made punishable under Sections 149, 429, 467, 468, 471 and 114 of the IPC. The Investigation Officer on complaint of one Jashomati Nandandas Ramaniklal Joshi registered the offences and investigated the allegations made in FIR dated 11.8.1995. According to the complainant, the ISCON has deposited amount with Steel Authority of India from the donations made by devotees to the said trust. That from time to time said FDR used to be renewed. According to complainant, the petitioner No. 1 Jeyesh Chandulal Vaidya was serving as Accountant in the year 1991-92 in the trust office of ISCON. The petitioner No.2 - Nilesh Bhogilal Dave happens to be a close friend of petitioner No.1. Complainant has alleged that deposit of Rs. 1,02,449/- which was due for payment in the year 1992 was expected to be received in due course of time. However, as amount has not been received, inquiry was made with the Steel Authority of India and it was found that amount of the said deposit was sent by Bank Draft. That said draft was deposited in the bank account of ISCON and thereafter by various withdrawals, amounts were appropriated. That complainant suspected petitioner No.1 being conversant with the being accounts of ISCON Trust had an opportunity to do the same and, therefore, gave complaint against petitioners No.1 & 2. The Investigation Officer recorded statement of various witnesses and seized several documents and on completion of investigation, filed the charge sheet against present petitioners. That the case was registered as Criminal Case No. 2255 of 1997.

3. That present petitioners moved application Exhibit 7 contending that material produced along with the charge sheet before the court does not disclose any evidence against the petitioners in respect to offences alleged and thereby charged being groundless, the proceedings against the petitioners as accused of the said case be dropped under Section 239 of the Cr.P.C. of 1973. Learned Chief Judicial Magistrate heard the application and vide order dated 20th January, 1998 rejected the application. Against which, petitioners preferred Criminal Revision Application No. 15 of 1998 before the Court of Addl. Sessions Judge Ahmedabad (Rural). Learned Addl. Sessions Judge heard the said application and vide impugned order dated 6th April, 1998 rejected the said application and confirmed the order

passed by the learned Chief Judicial Magistrate. Being aggrieved by the said order, the petitioners have approached to this court as stated hereinabove.

4. Learned Advocate appearing for the petitioners Shri A.R.Lakhia has referred to and relied on observations made by the Supreme Court in the matter reported vide AIR 1972 SC 545 and 1996 (3) Crimes 85 (SC) and has urged that if material produced along with the charge sheet does not disclose any evidence to proceed against the accused, it is the duty of the court to discharge the accused instead of holding the trial. Referring to the opinion of hand writing expert and certain portion of the statement of the witnesses, Shri Lakhia has submitted that in the present case also the complainant as well as certain witnesses have only expressed suspicion against present petitioners and there is no direct evidence implicating present petitioners in the offence alleged. Under the circumstances, Chief Judicial Magistrate as well as learned Addl. Sessions Judge have committed error by rejecting the said applications and this court should interfere and on scrutiny of the record discharge the petitioners as accused of the said criminal case. He has also referred to and relied on observations made in the matter reported vide 1975 (4) SCC 252 wherein the court has observed that on appreciation of evidence, if there is no opinion that signature has been forged by the accused, the accused cannot be convicted. Shri Lakhia has submitted in the instant case also though the hand writing expert has opined that writings contained in the body of the alleged cheques are similar to the writing of the petitioners, no specific opinion is expressed in respect to signature of the petitioners on the said cheques and thereby also the petitioners are entitled to claim discharge from the offence charged against them.

5. I have carefully gone through the material produced on record and the order passed by the learned Chief Judicial Magistrate. In my opinion, submission urged on behalf of the petitioners can hardly be merited for acceptance. In the instance case, learned Chief Judicial Magistrate has discussed the material collected by the Investigation Officer from which it could be established that present petitioner No.1 having worked as Accountant with said complainant Trust, was conversant with the bank process and had an opportunity to get the cheque book. That the concerned bank officers having verified the bank record have stated before the Investigation Officer that certain cheques were drawn from the Bank Account of the said Trust in which the

draft of the said FDR was deposited. The hand writing expert has also opined that sofar as the writings in the body of the cheques are concerned are similar to the writings of the petitioners.

6. It may be noted that some suspicion against the accused may not be the ground to proceed against accused in the trial. However, if the suspicion is so grave and the circumstances attendant to the same if establish at the time of trial, the court could come to the conclusion that accused is presumed to have committed the offence. In such case, the court could frame the charge irrespective of the claim of the accused to discharge. In the instant case, material collected by Investigation Officer is sufficient to hold a prima facie case against present petitioners as accused of the said criminal case and thereby I hold that this is not a fit case where interference of revisional jurisdiction is warranted.

7. In view of the above stated discussion, petition fails and stands disposed of as rejected. Rule is discharged with no order as to costs.

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